



Rec'd 7/27/76

1 RICHARD ERNST
635 Sacramento Street
2 Post Office Box 26314
San Francisco, California 94126
3 415-982-0211

4 Counsel for J. Edward Day

5 DONALD J. COHN
JAMES V. KEARNEY
6 WEBSTER & SHEFFIELD
One Rockefeller Plaza
7 New York, New York 10002
212-582-3370

8 Of Counsel
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 STEPHANIE KIPPERMAN, etc.,)	
)	
14 Plaintiff,)	No. C-75-1211-CBR
)	
15 vs.)	REPLY BRIEF OF J. EDWARD DAY
)	TO PLAINTIFF'S SUPPLEMENTARY
16 JOHN A. McCONE, et al.,)	AFFIDAVIT SUPPORTING OPPOSI-
)	TION TO DISMISSAL
17 Defendants.)	

18
19 This brief is submitted on behalf of defendant J. Edward
20 Day ("Day") in reply to the affidavit executed by William A.
21 Brockett, attorney for plaintiff, entitled "Supplementary Affi-
22 davit Supporting Opposition to Dismissal" ("Brockett Affidavit").¹

23 The Brockett Affidavit was submitted with the permission
24 of the Court, granted presumably for the purpose of giving plain-
25 tiff another opportunity to present facts to support personal
26 jurisdiction over the individual defendants, including Day. The
27 Court is aware of the numerous opportunities given plaintiff in

28
29 1 This brief deals exclusively with the issues of personal juris-
30 diction raised by the Brockett Affidavit. Plaintiff's arguments
31 with respect to 28 U.S.C. §1391(e) have been met in Day's prior
32 memoranda.

REPLY BRIEF OF J. EDWARD DAY TO
PLAINTIFF'S SUPPLEMENTARY AFFIDAVIT - 1

OGC Has Reviewed

OGC

1 the past year to support her bald, conclusory allegations that
2 defendant Day engaged in some wrong-doing in California. Suffice
3 it to say that, although plaintiff has imaginative theories, she
4 has consistently failed to present facts and has relied only on
5 conjecture and speculation.² This latest attempt is no exception.

6 The Brockett Affidavit paraphrases portions of the
7 transcript of the hearings before the Senate Select Committee
8 to Study Governmental Operations with Respect to Intelligence
9 Activities ("Select Committee") held in October 1975. The affi-
10 davit refers solely to a mail-opening program purportedly carried
11 on by the F.B.I. in San Francisco. The complaint, however, sets
12 forth no allegations as to a mail-intercept program carried on by
13 the F.B.I. and refers only to a mail-intercept program carried
14 on by the C.I.A. (Third Amended Complaint, ¶ 15).

15 Moreover, plaintiff alleges that her cause of action
16 and her nominal injury arise from the C.I.A.'s intercept of her
17 mail to or from the Soviet Union ("Soviet Mail"), not China or
18 other Far East Asian countries.³ The Brockett Affidavit does not

19

20

21 2 Indeed, Day has not even been a consistent subject of plaintiff's
22 speculation. Originally, plaintiff made no claim against Day
23 (Complaint dated June 13, 1975).

24

25 3. Third Amended Complaint, ¶¶ 17 and 20 of Count One, ¶ 2 of Count
26 Two, and ¶ 4 of Count Three. In the Third Amended Complaint,
27 plaintiff refers to the C.I.A. "West Coast intercept", but
28 clearly those activities had nothing to do with Day, or her
29 cause of action or her purported injury. See pp. 2-5, Supple-
30 mental Brief of Defendant J. Edward Day in Support of his Motion
31 to Dismiss, filed March 3, 1976.

32 ---

REPLY BRIEF OF J. EDWARD DAY TO
PLAINTIFF'S SUPPLEMENTARY AFFIDAVIT - 2

1 assert that the F.B.I.'s San Francisco mail program involved
2 Soviet Mail, but the Court is urged to speculate that it did
3 and that plaintiff's mail was intercepted in San Francisco by
4 the F.B.I. However, it is clear from a reading of the Select
5 Committee's final report, Book III, pp. 641-645, and the Affi-
6 davit of Kenneth L. Adams, Esq. (attached as Appendices A and
7 B to the "Response by Defendant Cotter to Plaintiff's Supplemen-
8 tary Affidavit Supporting Opposition to Dismissal" filed herein
9 on July 23, 1976) that the mail-intercept program carried on
10 by the F.B.I. in San Francisco did not include the intercept
11 of Soviet Mail but involved only mail to and from China and
12 other Far East Asian countries.

13 Thus, the contentions contained in the Brockett Affi-
14 davit do not support jurisdiction over Day in this action. The
15 activities discussed therein did not give rise to her purported
16 cause of action. Indeed, they do not even relate to the acts
17 complained of by plaintiff. Moreover, the Brockett Affidavit
18 does not link Day to any act occurring in California. In short,
19 as in her repeated attempts over the past year to establish per-
20 sonal jurisdiction, plaintiff has failed again to set forth evi-
21 dentiary facts sufficient to establish the necessary "minimal
22 contacts" to support personal jurisdiction over Day.⁴ To continue

23
24 ⁴ *Hoffman v. Halden*, 268 F.2d 280, 295 (9th Cir., 1959), *overruled*
25 *on another point*; *Cohen v. Norris*, 300 F.2d 24 (9th Cir., 1962);
26 *Mandelkorn v. Patrick*, 359 F.Supp. 692, 694 (D.C.D.C., 1973);
27 *Socialist Workers Party v. Attorney General*, 375 F.Supp. 318
28 (S.D.N.Y., 1974). See also pp. 4-9, Brief in Support of the
29 Motion of Defendant J. Edward Day to Dismiss the Amended Complaint
30 (filed January 15, 1976); pp. 2-5, Reply Brief of Defendant J.
31 Edward Day (filed February 4, 1976); and pp. 2-5, Supplemental
32 Brief of Defendant J. Edward Day in Support of his Motion to
Dismiss (filed March 3, 1976).

1 this action any longer as against Day, for discovery purposes
2 or otherwise, would violate Day's right to due process of the
3 law. Plaintiff, having failed to provide any facts relevant
4 to her claim that could establish jurisdiction over Day, now
5 casts about for any governmental action that may have occurred
6 in San Francisco, even though totally unrelated to her claim and
7 to Day. Day has a constitutional right to be free from the bur-
8 den of defending lawsuits where the "minimal contacts" require-
9 ments cannot be met.⁵

10

11 CONCLUSION

12 For the reasons set forth here and in Day's previous
13 memoranda, this action should be dismissed as to Day.

14 Respectfully submitted,

15 *Richard Ernst*

16 Richard Ernst
17 Counsel for Defendant
J. Edward Day

18 Donald J. Cohn
19 James V. Kearney
20 Webster & Sheffield
21 Of Counsel

22 Dated: July 23, 1976

23

24

25

26

27

28

29

30

31

32

5 *International Shoe Company v. State of Washington*, 326 U.S. 310,
316, 319 (1945); *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
City & County of San Francisco)

Kim Lacey, being first duly sworn,
deposes and says:

That I am a citizen of the United States, over the age of 18
and not a party to or interested in the within entitled cause; that my
business address is 635 Sacramento Street, San Francisco, California.

That I served by mail the following document:

REPLY BRIEF OF J. EDWARD DAY TO PLAINTIFF'S SUPPLEMENTARY
AFFIDAVIT SUPPORTING OPPOSITION TO DISMISSAL

in the following manner:

I enclosed a true copy of said document in an envelope
addressed as follows:

[See Exhibit A, attached]

I sealed said envelope and deposited it so sealed and
addressed on the 23rd day of July, 1976, with the
postage thereon fully prepaid, in a United States post office mail box
in the City and County of San Francisco, California.

KIM LACEY
Subscribed and sworn to before me
This 23rd day of July, 1976

DEBBIE GOR
Notary Public, in and for the State of
California, with principal office in the
City & County of San Francisco.

My commission expires

1	Steven M. Kipperman	Charles E. Hanger
2	Kipperman, Shawn & Keker	Brobeck, Phleger & Harrison
3	407 Sansome Street	111 Sutter Street
4	San Francisco, CA 94111	San Francisco, Calif. 94111
5	Irwin Goldbloom	John C. Milano
6	Civil Division	Milano & Cimmett
7	Department of Justice	Civic Center Building
8	Washington, D.C. 20530	507 Polk Street
9	Jacquelin Swords	San Francisco, CA 94102
10	Cadwalader, Wickersham & Taft	Kenneth Adams
11	One Wall Street	Dickstein, Shapiro & Morin
12	New York, New York 10005	2101 L Street, NW
13	Plato Cacheris	Washington, D.C. 20037
14	Suite 205	Martin Quinn
15	1709 New York Avenue, NW	Pettit, Evers & Martin
16	Washington, D.C. 20006	600 Montgomery Street
17	George Bush	San Francisco, Calif. 94111
18	Central Intelligence Agency	Seymour Glanzer
19	Washington, D.C.	Kenneth L. Adams
20	Marcus S. Topel	1735 New York Avenue, NW
21	360 Pine Street, Penthouse	Washington, D.C. 20006
22	San Francisco, California	Charles R. Donnenfeld
23	Stanley J. Friedman	Rodney F. Page
24	680 Beach Street, # 436	Cameron M. Blake
25	San Francisco, California	Arent, Fox, Kintner, Plotkin
26	Alvin H. Goldstein	& Kahn
27	Tuckman, Goldstein & Phillips	1815 H Street, NW
28	555 California Street, Suite 3180	Washington, D.C. 20006
29	San Francisco, California 94104	Donald J. Cohn
30	James A. Bruen	James V. Kearney
31	Assistant U.S. Attorney	Webster & Sheffield
32	16th Floor - U.S. Courthouse	One Rockefeller Plaza
	450 Golden Gate Avenue	New York, New York 10002
	San Francisco, California 94102	
	Paul R. Haerle	
	Thelen, Marrin, Johnson & Bridges	
	2 Embarcadero Center	
	San Francisco, California 94111	
	Stephen S. Mayne	
	Dinkelspiel, Pelavin, Steefel	
	& Levitt	
	1 Embarcadero Center, 27th Floor	
	San Francisco, California 94111	

EXHIBIT A

	UNCLASSIFIED		CONFIDENTIAL		SECRET
--	--------------	--	--------------	--	--------

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
4	S/MC				
5	DDS&T				
6	DDI				
7	DDA				
8	DDO				
9	D/DCI/NIO				
10	GC	✓			
11	LC				
12	IG				
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
19	C/IPS				
20					
21					
22					
SUSPENSE		Date			

Remarks:

for appropriate action

Executive Secretary

27 JUL 1978

Date

3437 (5-76)

(RECEIVED SECRETARY OF THE STATE)

Ogc

STATINTL
Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130003-2

Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130003-2